

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SHASTA

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F. A. COLBY, J. D. COOK, A. H. COOK,  
R. M. MURPHY and M. M. MURPHY,  
Plaintiffs,

vs.

L. O. STRAYER, JAMES W. BALLARD, JOHN  
W. COX, WILFORD E. ROSS, E. C. ENGLISH,  
HENRY LEE MARTIN, J. L. McCARTY, ISAAC  
MELTON, WALTER MELTON, First Doe, Second  
Doe, Third Doe, Fourth Doe and Fifth Doe,  
Defendants.

No. 5701

JUDGMENT

AND

DECREE

The above entitled cause having been referred to the Division of Water Rights (now Division of Water Resources) of the Department of Public Works of the State of California, as referee, by an order of the Court, entered on April 25, 1923, and made under authority of law as conferred by Section 24 of the Water Commission Act of the State of California, Statutes 1913, Chapter 586, as amended; said referee having made its investigation, the parties hereto having thereafter entered into a written stipulation and agreement, said stipulation providing that said referee might report to the above entitled Court a decree in accordance with the provisions of said stipulation, said parties having further stipulated that findings of fact and conclusions of law be waived, said Division, as referee, having filed its report herein, which report embodies said stipulation of the parties, and said matter being finally submitted to this Court on said report, including said stipulation, and it appearing that said stipulation is signed by all of the parties who have appeared in said action or by their successors in interest and that said parties who have signed said stipulation are the owners of the rights as agreed upon and set forth in said stipulation, and it further appearing as follows:

(a) Plaintiff J. D. Cook has died since the commencement of this action and that the Heirs of the Estate of J. D. Cook, deceased, are the owners of the rights set forth under his name in said stipulation.

(b) Joe Ensley, successor in interest of E. D. Herrick, has been regularly substituted as a defendant herein in the place and stead of L. O. Strayer.

(c) Edward Rice, has been regularly substituted as a defendant herein in the place and stead of John W. Cox whose true name is John Q. Cox.

(d) Edward Rice, successor in interest of J. A. Rainey and the J. B. Carswell Estate, has been regularly substituted as a defendant herein in the place and stead of Henry Lee Martin.

(e) Nellie Melton, surviving wife of defendant Isaac Melton, deceased, has succeeded to all the interest of said Isaac Melton involved in the above entitled action.

(f) G. H. Darrah has been regularly substituted as a defendant herein in the place and stead of Robert O. Winters who entered an appearance in said action as First Doe.

NOW THEREFORE IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS, TO-WIT:

(1st) There is in said Shasta County a natural stream of water known as and called "Oak Run Creek," which said creek arises southwest of Snow Mountain in Shasta County, State of California, and flows thence in a general south-westerly direction between well defined banks in a well defined channel to, upon, and across some of the lands of some of the parties to this action, which lands are hereinafter described, to its confluence with Old Cow Creek in said Shasta County and has so flowed since the memory of man.

(2nd) The parties plaintiff and the parties defendant in the above entitled action are the owners of the lands described in their respective pleadings, and as amended and pleaded by them; that the allotments of water from said Oak Run Creek and its tributaries as hereinafter set forth are for use upon their respective legal subdivisions of land described in Schedule I hereunto annexed and made a part hereof; that the respective parties are the owners of the acreages set forth under their respective names and of all the

lands embraced in the legal subdivisions in said Schedule I; and that said lands are depicted on the map herein referred to as the "Division of Water Rights Map", which map is entitled, "Map of North Cow and Oak Run Creek Watersheds Showing Diversion Systems and Irrigated Areas, Shasta County, California", which map is dated 1924, and is filed with the records of the above entitled action as Exhibit "C" of the report of referee.

(3rd) The parties plaintiff and the parties defendant are the owners of, or interested in, the ditches, conduits, pipe lines and other means of diversion described in their respective pleadings, and as amended and pleaded by them, and as depicted on said Division of Water Rights Map and are entitled to divert water, as hereinafter set forth, through said means of diversion at the points of diversion depicted on said map.

(4th) M. M. Murphy and R. M. Murphy, jointly, are at all times entitled to divert, either from an unnamed spring situated on their lands in the NE $\frac{1}{4}$  NE $\frac{1}{4}$  Section 25, T. 33 N., R. 2 W., M.D.B. & M., or from the Murphy-Estep Branch of Oak Run Creek, or partly from both sources, through either the Murphy Spring Ditch, or the Murphy Slough Ditch, or both of said ditches,

0.25 cubic foot per second,

said water to be used for domestic and stock watering purposes and for the irrigation of their lands as described in Schedule I hereof.

(5th) G. H. Darrah is at all times entitled to divert

0.025 cubic foot per second

from an unnamed spring situated on his lands in the SW $\frac{1}{4}$  SE $\frac{1}{4}$  Section 26, T. 33 N., R. 2 W., M.D.B. & M., said water to be used for domestic and stock watering purposes and for the irrigation of his lands as described in Schedule I hereof.

(6th) At all times when the flow of Oak Run Creek, including the foreign water conveyed to said Oak Run Creek from Mill Creek through the Welch and Strayer Ditch, is ample to permit, the ditches of the various parties to this action are entitled to continuous flow allotments from said Oak Run Creek and its tributaries, as set forth in Schedule II hereunto annexed and made a part hereof, said allotments to be used by the said parties for domestic and stock

watering purposes, and for the irrigation of their respective lands as set forth in Schedule I hereof.

(7th) Whenever the flow of Oak Run Creek, including the foreign water conveyed thereto from Mill Creek through the Welch and Strayer Ditch, measured at a point immediately above the intake of the Welch and Strayer Ditch in the NW $\frac{1}{4}$  SE $\frac{1}{4}$  Section 15, T. 33 N., R. 1 W., M.D.B. & M., is less than 5.40 cubic feet per second, then said flow shall be divided at said intake, 43 per cent of the same to be diverted into the Welch and Strayer Ditch, and 57 per cent of the same to remain in Oak Run Creek and be permitted to flow down said stream past said intake to the lower users.

(8th) Should the flow of Oak Run Creek below the Welch and Strayer Intake be insufficient at any time to supply the allotments hereinabove provided for in paragraph (6th) from said creek below said intake, then, during the continuance of such shortage, the users below the Welch and Strayer Intake shall divide the water supply available for them in the ratios that their respective maximum irrigation allotments as specified in Schedule II hereof bear to the total of their irrigation allotments provided in said Schedule II.

(9th) Subject to all of the foregoing rights and provisions, G. H. Darrah is entitled to divert from Oak Run Creek, through the Winters Ditch,

0.37 cubic foot per second,

said water to be used for domestic and stock watering purposes and for the irrigation of his lands as described in Schedule I hereof.

(10th) The points of measurement of all allotments of water hereinbefore provided in this decree shall be at the respective points of diversion from Oak Run Creek and its tributaries.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED AS FOLLOWS, TO-WIT:

(11th) The owners of the Welch and Strayer Ditch which diverts water from Mill Creek and conveys it to the natural channel of Oak Run Creek, to-wit: Wilford E. Ross, James W. Ballard, Joe Enslev, Edward Rice, and E. C. English shall jointly maintain that ditch in such condition of repair that the net loss

of water between the flume crossing on the South Fork of Mill Creek and the point of delivery into the natural channel of Oak Run Creek, shall not exceed 0.70 cubic foot per second.

(12th) Upon request of any party hereto, the Division of Water Resources of the Department of Public Works of the State of California, or its successor, as the same is now or may hereafter be constituted, may investigate, and if upon investigation it appears to said Division that necessity therefor exists, said Division, or in case said Division shall fail to act, then the judge of the Superior Court of Shasta County, may appoint a water master to distribute the waters of Oak Run Creek and its tributaries in accordance with this decree, and said water master, when so appointed, shall have power and authority to inspect and regulate the diversions of all the parties hereto in accordance with this decree, and in the exercise of such authority may enter upon the lands of said parties for the purpose of such inspection and regulation and may establish and maintain such gaging stations and measuring devices, and require such diversion works to be constructed in such streams and such head-gates to be installed in the diversion ditches, as may be necessary or convenient. The water master, when so appointed, or his successor, shall continue in authority until October first of the irrigation season for which he was appointed unless otherwise agreed to by all parties hereto, but shall not hold over from one irrigation season to another. All costs and expense of distribution of water through the agency of such water master, incurred by the said Division of Water Resources, or by the water master in the event that his appointment is made by the judge of the Superior Court of Shasta County, shall be borne by the parties hereto, in the ratios that their respective allotments, as provided in Schedule IV, hereunto annexed and made a part hereof, bear to the total of the allotments provided in said Schedule IV.

(13th) The owners of each ditch through which water is diverted from Oak Run Creek or its tributaries as herein provided, shall install, under the supervision of an engineer appointed by the Division of Water Resources, such

permanent headgates and measuring devices as shall be required and approved by said Division of Water Resources; such installations to be made within six months of the date of entry of this decree, or such later date as may be ordered by the above entitled court. The several ditch owners shall furnish all necessary labor and material for the construction and installation of said headgates and measuring devices in their respective ditches, and the cost of supervision as herein provided shall be borne by the parties hereto, in the ratios that their respective allotments, as provided in Schedule IV, hereof, bear to the total of the allotments provided in said Schedule IV.

(14th) Each and every party to this action, his or her agents, successors, grantees and assigns, be, and they are hereby perpetually enjoined and restrained from doing anything in violation of the terms or provisions of this decree, or diverting any water from said Oak Run Creek and its tributaries at any time in violation of the terms hereof, or from doing anything that will obstruct or interfere with any other right in this decree adjudged and decreed.

(14a) It is further ordered, adjudged and decreed that nothing herein contained shall be construed so as to prevent any of the parties hereto, having a joint ditch, where there is a continuous flow allotment to said ditch, from employing by agreement of such joint users of said ditch, a system of rotation as among themselves or from preventing any of the parties hereto from using all or any portion of their respective allotments on all or any portion of their respective lands, so long as the maximum quantity of water shall not exceed the maximum allotment awarded to their entire lands.

(15th) FINALLY IT IS ORDERED, ADJUDGED, AND DECREED that each party hereto shall pay his own costs and that the expenses incurred by the Division of Water Rights (now Division of Water Resources) of the Department of Public Works of the State of California, as referee, as set forth in Schedule III hereunto annexed and made a part hereof, shall be borne by the parties hereto in the following proportion:

<u>Name</u>	<u>Portion of Expense</u>
F. A. Colby	\$65.90
A. H. Cook and Heirs of Estate of J. D. Cook	91.20
M. M. Murphy and R. M. Murphy	116.70
Walter L. Melton	25.40
Nellie Melton	40.50
W. E. Ross	33.80
Edward Rice	33.80
James W. Ballard	38.80
Joe Ensley	38.80 (paid)
Edward Rice	38.80
E. C. English	38.80
J. L. McCarty	10.12
G. H. Darrah	40.00
Total	\$612.62

and the parties hereto shall pay all apportionments set forth in this paragraph to the clerk of the Court, except \$38.80 due from Joe Ensley which has already been paid, within thirty days from the date of this decree, said Clerk to transmit said sums when paid to said Division of Water Resources, 401 Public Works Building, Sacramento, California.

Done in open court this 22nd day of July, 1932.

(Signed) Walter E. Herzinger  
Judge of Said Superior Court.

SCHEDULE I

DESCRIPTION OF LANDS IRRIGATED

JAMES W. BALLARD:

5.8 acres in SW $\frac{1}{4}$  SE $\frac{1}{4}$  Sec. 30, T. 33 N., R. 1 W., M.D.B. & M.  
6.3 acres in SE $\frac{1}{4}$  SW $\frac{1}{4}$  Sec. 30, T. 33 N., R. 1 W., M.D.B. & M.  
12.1 acres - Total

✓ Tract 4-42

EDWARD RICE: (Same lot as J.L. McCarty)  
→ Ross & Cox in Decree 5804 (N. Cow)

Tract-53 (23.8) acres in Lot 3 of Sec. 30, T. 33 N., R. 1 W., M.D.B. & M.  
14.4 acres in NE $\frac{1}{4}$  SE $\frac{1}{4}$  Sec. 25, T. 33 N., R. 2 W., M.D.B. & M.  
0.5 acre in NW $\frac{1}{4}$  SE $\frac{1}{4}$  Sec. 25, T. 33 N., R. 2 W., M.D.B. & M.  
38.7 acres - Total

SUCCESSOR TO:  
① John Cox  
② J.A. Rainey & The  
J.B. Carswell Estate  
(Henry L. Martin)

F. A. COLBY:

3.3 acres in NW $\frac{1}{4}$  SE $\frac{1}{4}$  Sec. 24, T. 33 N., R. 2 W., M.D.B. & M.  
8.2 acres in NE $\frac{1}{4}$  SE $\frac{1}{4}$  Sec. 24, T. 33 N., R. 2 W., M.D.B. & M.  
20.0 acres in SE $\frac{1}{4}$  NE $\frac{1}{4}$  Sec. 24, T. 33 N., R. 2 W., M.D.B. & M.  
31.5 acres - Total

✓ Tract 4-52

A. H. COOK AND ESTATE OF J. D. COOK:

6.4 acres in NE $\frac{1}{4}$  SW $\frac{1}{4}$  Sec. 19, T. 33 N., R. 1 W., M.D.B. & M.  
12.9 acres in Lot 2 of Sec. 19, T. 33 N., R. 1 W., M.D.B. & M.  
33.6 acres in Lot 3 of Sec. 19, T. 33 N., R. 1 W., M.D.B. & M.  
0.1 acre in NE $\frac{1}{4}$  SE $\frac{1}{4}$  Sec. 24, T. 33 N., R. 2 W., M.D.B. & M.  
0.3 acre in SE $\frac{1}{4}$  NE $\frac{1}{4}$  Sec. 24, T. 33 N., R. 2 W., M.D.B. & M.  
53.3 acres - Total

✓ Tract 4-32  
" ?  
" ?  
4-32  
"

E. C. ENGLISH:

13.4 acres in NE $\frac{1}{4}$  NW $\frac{1}{4}$  Sec. 35, T. 33 N., R. 2 W., M.D.B. & M.  
18.3 acres in NW $\frac{1}{4}$  NE $\frac{1}{4}$  Sec. 35, T. 33 N., R. 2 W., M.D.B. & M.  
9.9 acres in SW $\frac{1}{4}$  NE $\frac{1}{4}$  Sec. 35, T. 33 N., R. 2 W., M.D.B. & M.  
41.6 acres - Total

✓ Tract 4-57

JOE ENSLEY: (J. Parsons in N. Cow Decree)

9.7 acres in SE $\frac{1}{4}$  SE $\frac{1}{4}$  Sec. 25, T. 33 N., R. 2 W., M.D.B. & M.  
1.5 acres in SW $\frac{1}{4}$  SE $\frac{1}{4}$  Sec. 25, T. 33 N., R. 2 W., M.D.B. & M.  
11.2 acres - Total

✓ Tract 4-54  
SUCCESSOR TO:  
J.D. HARRIS

J. L. McCARTY:

2.1 acres in Lot 3 of Sec. 30, T. 33 N., R. 1 W., M.D.B. & M.

46.72  
Tract 4-55  
Same lot as  
Edward Rice

WALTER L. MELTON:

7.7 acres in SE $\frac{1}{4}$  NE $\frac{1}{4}$  Sec. 20, T. 33 N., R. 1 W., M.D.B. & M.

✓ Tract 4-55



SCHEDULE I, (Continued)

NELLIE MELTON

3.3 acres in SE $\frac{1}{4}$  NW $\frac{1}{4}$  Sec. 19, T. 33 N., R. 1 W., M.D.B. & M.  
8.2 acres in SW $\frac{1}{4}$  NE $\frac{1}{4}$  Sec. 19, T. 33 N., R. 1 W., M.D.B. & M.  
5.5 acres in SE $\frac{1}{4}$  NE $\frac{1}{4}$  Sec. 19, T. 33 N., R. 1 W., M.D.B. & M.  
1.0 acre in NE $\frac{1}{4}$  SW $\frac{1}{4}$  Sec. 19, T. 33 N., R. 1 W., M.D.B. & M.  
3.0 acres in NW $\frac{1}{4}$  SE $\frac{1}{4}$  Sec. 19, T. 33 N., R. 1 W., M.D.B. & M.  
1.8 acres in NE $\frac{1}{4}$  SE $\frac{1}{4}$  Sec. 19, T. 33 N., R. 1 W., M.D.B. & M.  
22.8 acres - Total

✓ Successor To:  
Isaac Melton,  
husband.  
Tract 4-34

M. M. MURPHY AND R. M. MURPHY:

5.3 acres in Lot 4 of Sec. 19, T. 33 N., R. 1 W., M.D.B. & M.  
30.6 acres in SE $\frac{1}{4}$  SE $\frac{1}{4}$  Sec. 24, T. 33 N., R. 2 W., M.D.B. & M.  
10.3 acres in NE $\frac{1}{4}$  NE $\frac{1}{4}$  Sec. 25, T. 33 N., R. 2 W., M.D.B. & M.  
46.2 acres - Total

✓ Tract?  
Tract 4-33  
" " "

WILFORD E. ROSS:

24.3 acres in Lot 2 of Sec. 30, T. 33 N., R. 1 W., M.D.B. & M.  
24.3 acres - Total

✓ Tract  
4-48?

G. H. DARRAH:

0.2 acre in SW $\frac{1}{4}$  SW $\frac{1}{4}$  Sec. 26, T. 33 N., R. 2 W., M.D.B. & M.  
16.5 acres in SE $\frac{1}{4}$  SW $\frac{1}{4}$  Sec. 26, T. 33 N., R. 2 W., M.D.B. & M.  
3.2 acres in SW $\frac{1}{4}$  SE $\frac{1}{4}$  Sec. 26, T. 33 N., R. 2 W., M.D.B. & M.  
19.9 acres - Total

✓ Successor To:  
R.O. Winters  
Tract 4-55

Table 11

## SCHEDULE II

CONTINUOUS FLOW ALLOTMENTS OF WATER  
EXPRESSED IN CUBIC FEET PER SECOND.

Property Owner	Ditch #	Acreage to be Supplied	Amount Continuous Flow Allotment (Sec. Ft.)	Tract
F. A. Celby	Kirkendahl 15	31.5	0.65	4-52
A. H. Cook and Estate of J. D. Cook	Predmore 14	53.3)	0.90	4-32
M. M. Murphy and R. M. Murphy	Predmore	37.5)	0.90	4-33
Walter L. Melton	(Upper North Side) 40 (Lower North Side) 41 (or South Side 12)	7.7	0.25	4-35
Nellie Melton	Alpaugh	22.8	0.40	4-34
Wilford E. Ross	Welch and Strayer	24.3)		4-41
J. L. McCarty	Welch and Strayer	2.1)		4-46
James W. Ballard	Welch and Strayer	12.1)	2.30 ***	4-42
Joe Ensley	Welch and Strayer	11.2)	1/2	4-54
Edward Rice	Welch and Strayer	38.7)		4-53
E. C. English	Welch and Strayer	41.6)	1/2	4-57
Total		282.8	5.40	

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Welch &amp; Strayer

Water from Mill Cr. (con. to Par. 4-6)  
Also, Welch & Naylor Ditch brings  
imported water from Clover Cr. to Lower Oak  
Run Area. (see Schedule 2, Div. 3, in Clover  
Cr. Decree)

Note: ① see Par. 5 & 3 in this Decree for  
additional rights.  
② see Par. 4

SCHEDULE III

STATEMENT OF EXPENSES INCURRED BY DIVISION OF WATER  
RIGHTS, (NOW DIVISION OF WATER RESOURCES) IN THE OAK  
RUN CREEK REFERENCE.

Salaries & Wages . . . . .	\$421.19
Automobile Expense . . . . .	47.55
Board & Lodging . . . . .	99.73
Travel Expense . . . . .	1.50
Printing & Blue Printing . . . . .	38.28
Miscellaneous Expense . . . . .	<u>4.37</u>
Total . . . . .	\$ 612.62

SCHEDULE IV

CONTINUOUS FLOW ALLOTMENTS FROM OAK RUN  
CREEK AND TRIBUTARIES TO BE USED AS A  
BASIS FOR APPORTIONMENT OF ANY EXPENSES  
THAT MAY BE INCURRED FOR WATER MASTER  
SERVICE IN THE FUTURE.

NAME	CONTINUOUS FLOW WATER ALLOTMENT CUBIC FEET PER SECOND
F. A. Colby	0.650
A. H. Cook and Estate of J. D. Cook	0.900
M. M. and R. M. Murphy	1.150 <i>? see Par. 4</i>
Walter L. Melton	0.250
Nellie Melton	0.400
W. E. Ross	<i>1/2 - 0.050</i> 0.3335 + 0.05 = 0.3835
James W. Ballard	<i>1/2</i> 0.383
Joe Ensley	<i>1/2</i> 0.383
Edward Rice	<i>1/2 - 0.050</i> 0.7165 + 0.05 = 0.7665
E. C. English	<i>1/2</i> 0.383
J. L. McCarty	<i>0.100</i> 2.2990
G. H. Darrah	0.395 <i>? see Par. 5 D.</i>
TOTAL	6.044

*37  
0.024  
395*